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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,151	10/12/2001	Brian M. Adams	A-70895/RBC/VEJ	3896
7590 06/04/2004			EXAMINER	
FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP			HYLTON, ROBIN ANNETTE	
Suite 3400			ART UNIT	
Four Embarcadero Center			PAPER NUMBER	
San Francisco, CA 94111-4187			3727	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/977,151

Applicant(s)

ADAMS, BRIAN M.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-23 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Molin et al. (US 6,591,999).

Regarding claim 1, the remote end portion 27 of tab 12 is semi-circular and is unconnected to the frangible membrane 11.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1,3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks et al. (US 5,839,627).

Hicks teaches the claimed fitment except for a semi-circular member having first and second ends, the semi-circular member being helical and extending approximately 270°. Hicks teaches at column 5, lines 4-6 that the member can have other desired shapes including a "tab or handle or any other protrusion suitable for grasping".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the gripping member with a semi-circular and helical member having first and second ends, since such a modification would have involved a mere change in the shape of a

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component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 5, it would have been obvious matter of design choice and optimization to one having ordinary skill in the art at the time the invention was made to provide the semi-circular member with an extension approximately 270°. Doing so saves on material necessary for manufacturing the gripping member.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above and further in view of Wise et al. (US 3,135,441).

Hicks as modified teaches the claimed fitment except for gripping protrusions on the semi-circular member.

Wise teaches it is known to provide gripping protrusions on a member used to remove a membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of gripping protrusions on the modified gripping member Hicks as taught by Wise. Doing so provides a more secure grasp on the member.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Guglielmini et al. (US 5,301,849).

Hicks as modified teaches the claimed fitment except for a portion of the horizontally extending member being above the upper end of the spout.

Guglielmini teaches it is known to provide a portion of the horizontally extending member being above the upper end of the spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a portion of the semi-circular member being above the upper end of the spout. Doing so allows for easier grasping of the gripping member as desired to break

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the frangible membrane.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

8. Claims 15-23 are allowed over the art of record.

9. The following is a statement of reasons for the indication of allowable subject matter: regarding claim 15, the prior art does not teach a fitment comprising a spout having an upper end and a lower end; a frangible membrane sealing off said spout and having a peripheral edge joined to said spout along a line of weakness; a gripping member adapted to facilitate removal of said frangible membrane from said spout, said gripping member including a horizontally extending member having a lower edge and a first end, said first end being connected to said frangible membrane adjacent said line of weakness; and a frangible connection interconnecting a portion of said lower edge of said horizontally extending member and an adjacent portion of said upper end of said spout such that the horizontally extending member is frangibly connected to both the frangible membrane and to upper end of the spout.

***Conclusion***

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate  
\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

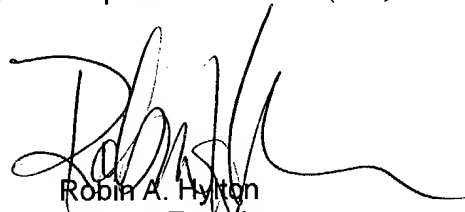
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
June 01, 2004

  
Robin A. Hylton  
Primary Examiner  
GAU 3727